IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 391 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CENTRAL BUREAU OF IVESTIGATION

Versus

ARJUN PRIBHDAS KUNDANANI

Appearance:

1. Criminal Revision Application No. 391 of 1999

MR AMIT J.SHAH for Petitioner No. 1

MR YOGESH S LAKHANI for Respondent No. 1-2

NOTICE SERVED for Respondent No. 1,2

RULE SERVED for Respondent No. 1,2

MR SJ DAVE, LD.APP for Respondent No. 3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 01/05/2003

JUDGEMENT

1. This Criminal Revision Application has been filed by Central Bureau of Investigation against the respondents-original accused under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973, (for short `the Code') for challenging an order dated 30th April, 1999, recorded by the learned Special Judge i.e. the Additional City Sessions Judge, Ahmedabad City, in Special Case No. 30/85. It seems that the said case was instituted against the accused who are the contesting respondents in this revision application for offences punishable under Section 5 of the Prevention of Corruption Act, 1988, read with Section 120-B, 420 of the Indian Penal Code. The special case was registered in 1985 and till 1998 the matter had not proceeded further and evidence was not recorded. Therefore, the accused had submitted application at Exh.76 on 2.12.1998 stating that since 1988 no evidence has been recorded and witnesses have not been kept present, the Court should consider the decision of Raj Deo Sharma Vs. State of Bihar reported in JT 1998 (7) SC 1 and close the evidence. The trial court heard the parties and found that despite the passage of seven years, witnesses were not kept present and at times even the learned Special Public Prosecutor in charge of the prosecution did not remain present. The trial court followed the decision of the case of Raj Deo Sharma and allowed the application Exh.76 and closed the evidence of the prosecution in the said case.

2. Feeling aggrieved by the said order of the trial court, the petitioner CBI has preferred this revision application before this Court under Section 397 read with Section 401 of the Code.

3. In the present revision application, the CBI has contended that the learned trial Judge has failed to appreciate the judgment of the Hon'ble Supreme Court. That the learned Judge has overlooked the judgment reported in 1998 Cri.L.J. 195, 1998 Cr.L.J. 2380. That the judgment relied upon by the trial court was not applicable to the facts of the case on hand. That the learned trial Judge has failed to appreciate that the judgment of Raj Deo Sharma Vs. State of Bihar can not be read in isolation. That the trial court has failed to appreciate that the case of Husainara Khatoon's case is not applicable to the facts of the case on hand. That on the whole the order of the trial court closing the evidence of the CBI is illegal and deserves to be quashed and set aside. The petitioner, therefore, has prayed that the present revision application be allowed and the impugned order dated 30th April, 1999, recorded by the

learned trial Judge below application Exh.76 in Special Case No.30/85 may be set aside.

4. On receipt of the revision application, Rule was issued, and in pursuance of the service of notice of rule, Mr.Yogesh Lakhani, learned advocate has appeared on behalf of the contesting respondents. On the other hand, Mr.S.J.Dave, learned APP has appeared on behalf of the State of Gujarat. During the course of arguments, Mr.Lakhani, learned advocate for the original accused has strongly objected to the grant of present revision application, whereas Mr.S.J.Dave, learned Addl.P.P. has supported the contention raised by the learned Central Government Standing Counsel in favour of the grant of the present revision application.

5. Now, by and large, the facts cannot be disputed. The chargesheet was filed and the special case was registered in 1985 and it seems that though the charge was framed on 25.11.1988, evidence was not recorded till 1998. By and large, it appears that, on some occasions the learned Special Public Prosecutor appearing for the CBI before the trial court did not remain present and witnesses were not kept present. It also seems that the CBI does not appear to have applied for issue of witness summons. These are the hard facts which cannot be disputed.

6. The learned Central Government Standing Counsel has argued the matter at length stating that on some occasions even the accused were not present and sometimes the advocates for the accused were not present and sometimes the court was busy with other work and, therefore, the case could not be conducted. However, it is not much in dispute that the witnesses were not present throughout the period for nearly five years after the charge was framed.

7. Mr.Lakhani, learned advocate advocate for the respondents in this revision application has submitted an interesting information in a tabular form showing the presence of the advocates, witnesses etc. on different dates between 1988 and 1998. The said information supplied by him can be shortly summarised as follows:

(i) many occasions-adjournments sought by Spl.P.P.
(ii) 2 to 3 occasions-adjournments by joint request.
(iii) 3 to 4 occasions-adjournments by court.
(iv) 3 to 4 occasions strike.

7.1 Since this is an outcome of the exercise of Mr.Lakhani after verifying records of the trial court, we may not dispute the correctness of the above fact.

8. At the same time, it is not in much dispute that the witnesses were not present on any of the above dates. Now, it is required to be considered that so far the Raj Deo Sharma case is concerned, certain guidelines were issued by the Hon'ble Supreme Court of India for closure of evidence in criminal cases of certain categories. In fact, the guidelines depend upon the nature of offence and quantum of punishment provided for the same. The basis for such guidelines can be drawn from a decision of the Hon'ble Supreme Court in a case of Abdul Rehman Antulay Vs. R.S. Nayak reported in AIR 1992 SC 1701. A Bench of Five Hon'ble Judges of the Hon'ble Supreme Court had laid down certain propositions therein which may be reproduced for ready reference as follows:

"(1) Fair, just and reasonable procedure implicit in Art.21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the societal interest also, does not make it any-the-less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.

(2) Right to Speedy Trial flowing from Art.21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial. That is how, this Court has understood this right and there is no reason to take a restricted view.

(3) The concerns underlying the Right to speedy trial from the point of view of the accused are:

(a) the period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;

(b) the worry, anxiety, expense and disturbance to his vocation and peace,

resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and

(c) undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise."

9. It is required to be considered that while issuing the aforesaid guidelines the Hon'ble Supreme Court made it clear that for speedy trial time limit for trial cannot be drawn. Therefore, on one hand, the right of speedy trial under Article 21 of the Constitution of India has been considered by the Hon'ble Supreme Court, and on the other hand, the guidelines as aforesaid have been laid down therein. Simultaneously, it has also been observed that the outer time limit for trial and disposal of a criminal case cannot be drawn. These three principles are required to be kept in mind while deciding the present revision application.

10. On the strength of the said decision, the Hon'ble Supreme Court of India had again given specific direction in two sets of matters. The first is known as "Common Cause I" and "Common Cause II". The second is known as "Raj Deo Sharma case I" and "Raj Deo Sharma case II". However, all the aforesaid decisions were again considered by a larger Bench of the Hon'ble Supreme Court consisting of Seven Hon'ble Judges of the Hon'ble Apex Court. This can be gathered from the case of P.Ramachandra Rao vs. State of Karnataka reported in 2002(2) G.L.H. 518. The Hon'ble Supreme Court had considered all the aforesaid decisions including the decision of Common Cause I and Common Cause II, Raj Deo Sharma case I and Raj Deo Sharma case reported in JT 1996 (4) SC 701, 1996(6) SCC 775, JT 1998(7) SC 1 and JT 1999(7) SC 317. It has been observed by the Hon'ble Supreme Court that the directions issued in the aforesaid four matters may not be treated to be a good law. The Hon'ble Supreme Court has also observed that it is not the province of the Court to lay down a law of limitation for the disposal of a particular matter. At the same time, the guidelines issued in A.R.Antulay's case (supra) have not been disturbed.

11. Therefore, it can be gathered that the guidelines as to the action which could be taken in accordance with the provisions made in Sections 309, 311 and 258 of the Code referred in A.R.Antulay's case (supra) do not appear

to have been disturbed by the Hon'ble Supreme Court in the aforesaid last decision. A suggestion was also made in A.R.Antulay's case in guideline no.5 that appropriate help can also be taken by resorting to the provisions of Section 482 of the Code as well as under Article 226 and 227 of the Constitution of India for appropriate writ for suitable direction.

12. It is also required to be considered that while issuing guidelines for the closure of prosecution evidence in Common Cause I, the Hon'ble Supreme Court had considered the cases providing punishment of different nature. However, the said guidelines were modified by Common Cause II, wherein it was very clearly and positively laid down that certain types of offences would not be covered by the said guidelines. Meaning thereby, that some offences of a special nature were not required to be dealt with in accordance with the guidelines provided in Common Cause I. It is required to be considered that the offences punishment under the Prevention of Corruption Act are those offences which have been exempted from the operation of "Common Cause I". The effect of the guidelines issued in Common Cause I and Common Cause II has been referred by this Court in a judgment dated 9.10.2000 in Special Criminal Application No.44/99 (Bhagwatiprasad Dolatrai Mehta Vs. State of Gujarat). Therefore, it is clear that the offences punishable under the Prevention of Corruption Act were excluded from the operation of the guidelines issued by Common Cause I case by specific mention in Common Cause II.

13. Now, so far as Raj Deo Sharma I and Raj Deo Sharma II are concerned, it is very clear from the language thereof that they are supplementary in nature. In other words, the said two subsequent cases do not have over-riding effect over the first two cases of Common Cause I and Common Cause II. This would clearly mean that the cases under the Prevention of Corruption Act were not required to be dealt with by the guidelines issued by Common Cause I, Common Cause II, Raj Deo Sharma I and Raj Deo Sharma II case. In other words, the prosecution evidence could not be closed on the strength of these four cases.

13.1 At the same time, it is also required to be considered as to whether, independent of the said four cases, the trial court was justified in closing the evidence. Same way, it is required to be considered that application at Exh.76 was filed by the accused person for closure of evidence before the trial court by specific

reference to the Raj Deo Sharma case and therefore it can be gathered that the trial court did have in it's mind the guidelines issued thereunder while dealing with and deciding the said application of the respondent.

14. I have reproduced hereinabove the information supplied by the learned advocate for the respondents showing the presence or absence of the Public Prosecutor, accused persons etc. But undisputedly witnesses were not kept present on those dates. While considering the statutory and constitutional right of accused person to have a speedy trial under Sections 309 of the said Code and under Article 21 of the Constitution of India, one cannot omit to consider the right of the informant - the complainant - the man behind the screen and off the stage who put the investigating machinery into motion and who is the person at the foundation and hence not visible but who is the root cause for bringing the accused to the court. In the present law and practice, the said informant-complainant is behind the screen and behind the stage since he is referred only as a witness. He has no independent right to participate in the criminal proceedings conducted before a Sessions Court. The trial is in the hands of a Public Prosecutor or a Special Public Prosecutor. The original informant has hardly any voice in the prosecution before the Sessions Court. He or his advocate may issue some information or instruction to the Public Prosecutor or the Special Public Prosecutor, as the case may be. Nevertheless, the trial is in the hands of the Public Prosecutor or the Special Public Prosecutor as the case may be. If the Public Prosecutor feels that it would be proper to act upon the instruction of the informant, he would be at liberty to do so but he may not be bound to follow the said instruction. Therefore I say that the informant is behind the back, behind the screen and behind the stage. As said above, he is the person in foundation who has put the investigating agency into motion and on account of whose information the investigation has been undertaken and the accused have been arrested and brought to the court for trial. He never knows about the dates fixed for his appearance, for his evidence and for evidence of witnesses in the court unless witness summons has been issued to and served upon him and witnesses. It is found that on one hand the prosecution has never applied for issue of witness summons to the said informant and other witnesses. Sameway, it is also found that the court itself has never issued summons to any witness for remaining present in the court. It is not on record that the CBI had informed the informant and witnesses to remain present in court. This would mean that the

original informant and other witnesses were totally unaware about the proceedings which went on in the trial court without effective proceedings. I am of the view that this aspect requires deep consideration before any court would undertake a procedure for the disposal of a case for want of evidence or for the closure of the evidence of the prosecution.

15. In a private complaint, if a complainant remains absent, an inference may be drawn that he has lost interest in the prosecution of the case. This is not the position in a police chalan case. There the witnesses would come to the court only when they are served with witness summons. In the case on hand it is noticed that the prosecution never applied for issue of summons. The prosecution never made any effort to keep the witnesses present in court. Simultaneously, the court did not issue witness summons to the witnesses and informant for remaining present in the court so that their evidence could be recorded. It is not made clear by the trial court during the course of the order impugned in this revision application as to why the court itself never issued witness summons to the witnesses concerned. Same way it has not been observed by the trial court during the course of the impugned order that the case on hand was the only a case kept on board of the court for hearing of evidence on the aforesaid dates and because the witnesses for the prosecution were absent, the court had no other work to transact on those dates and the entire period was a wasteful wrong. The trial court has observed that it is true that the trial court is required to deal with many other types of cases including the cases in which the accused are in jail. Ordinarily, the under trial prisoner's case get priority over the case in which the accused may be on bail. However, the court has strike the balance. If the court goes on taking up the cases of under trial prisoners only then the cases in which the accused may be on bail would not be conducted for a very long time. This is exactly what has happened in the case on hand. The respondents were admittedly on bail and therefore they might not have been given priority by the trial court for the trial of their case. It may be that the court concerned may be busy with the trial of the under trial prisoner's case. Even the trial court has observed that there are so many under trial cases pending with it which are required to be dealt with by the said court.

15.1 However, when the trial court was required to dealt with cases of so many types then the distribution could be made judiciously with respect to cases which

could be given to other learned Judges of the said court. The learned Judge who has passed the impugned order was probably the Additional Principal Judge of the Court of City Civil and Sessions Court, Ahmedabad City. It seems that the learned Principal Judge and the learned Additional Principal Judge of the City Civil and Sessions Court are required to deal with the cases of CBI. It is true that those two learned Judges may also require to dealt with and decide other types of cases but those cases could simultaneously be dealt with and decided by other Judges of City Civil and Sessions Court. Therefore, a distinction could be made between the cases which were required to be dealt with and decided exclusively by the learned Principal Judge and the learned Additional Principal Judge of the City Civil & Sessions Court, and the cases which could simultaneously be conducted by other learned Judges of the said Court. The learned Principal Judge should have considered the desirability of transfer of cases to other learned Judges of the said court which could be transferred to them retaining those cases on their file which would be exclusively triable by the first two learned Judges. This could be done by the learned Principal Judge himself or in consultation with the Hon'ble Administrative Judge of the High Court of Gujarat in charge of the City Courts. It seems that this process does not appear to be undertaken.

16. The learned advocate for the contesting respondents has taken me through an important judgment of this Court rendered by Hon'ble Mr.Justice H.H.Mehta in Criminal Revision Application No.546 of 1997 dated 15.1.2003. It is required to be considered that the original case which had come to be considered in the aforesaid criminal revision application was related to offences punishable under the Essential Commodities Act, 1955, whereas, the present case relates offences punishable under the Prevention of Corruption Act. This shows that the offences in both the matters are basically different. This fact is required to be borne in mind while considering the applicability of the judgment in Criminal Revision Application No.546 of 1997 in State of Gujarat Vs. Patel Tejabhai Jethabhai rendered on 15.1.2003 by this Court.

17. It is also required to be considered that in the aforesaid judgment, the learned Judge has observed in para 17.2 that the offences for which the trial has been delayed cannot be said to be a serious offence looking to the quantum of punishment which could have been inflicted if the trial would have ended in a conviction and

therefore the arguments that the offences for which the accused were put up for trial are serious offences were negatived in that case. Therefore in the said case the offences were punishable under the Essential Commodities Act, 1955, and the maximum punishment, according to the observation in para 17.2 was of two years. The case on hand has different set of facts. Here the offences are punishable under the Prevention of Corruption Act, and therefore on the face of the record, the offences which are being faced by the present respondents are of a serious nature and they are required to be dealt with and decided by Special Courts presided over by a Special Judges. This fact cannot be over-looked or ignored.

18. The learned Judge has also considered in para 17.3 of his judgment that there were about 17 adjournments granted to the prosecution between 1990 and 1997 for keeping the witnesses present. A list of adjourned dates can be gathered from para 17.3 of the said judgment.

19. In the case on hand, it is clear that the matter was adjourned on so many occasions and out of those adjournments even the court was busy on some occasions. This is a special fact which was not there in Criminal Revision Application No.546 of 1997. Therefore the facts of the case in the said revision application and the facts of the case on hand are apparently different and not comparable and therefore the judgment in the aforesaid criminal revision application will not apply to the facts of the present case on hand. Moreover, the fact that the court was busy on certain occasions and therefore it could not take up the present case was not a fact before the learned Judge dealing with the said criminal revision application. Sameway, the absence of accused, the joint request, the request for adjournments by the defence were also not the facts in the case before the learned Judge dealing with the said revision application. So from different angles, the facts are different and therefore the said judgment will not apply to the facts of the case on hand.

20. It is true that apart from the said decisions and even considering the decision of A.R.Antulay's case (supra), the powers of Judges and Magistrates to close the evidence have not been taken away by any of those judgments. The latest pronouncement of the Hon'ble Supreme Court in P.Ramachandra Rao Vs. State of Karnataka (supra) has said that it is not the function of the court to lay down a law of limitation for closure of evidence and such a law cannot be applied uniformly

without having regards to the facts and circumstances of each particular case. At the same time, in the case on hand though it was the duty of the prosecution to keep the witnesses present and to see that applications for witness summons are presented, nevertheless there was some duty on the part of the court concerned also. As stated above, if the Public Prosecutor was absent and if the witnesses were not kept present and if the applications for witness summons were not presented by the prosecution then also the court was not powerless. The court itself could have issued witness summons in order to see that the person behind the screen of the stage does not suffer. In the present case, I find that on account of the closure of evidence of the prosecution, without intimation or notice to the original informant, it has resulted in serious injustice to the cause and system of justice and to the cause of the original informant. He never knew about the dates fixed for recording of evidence before the trial court. He never knew that the applications were submitted by different accused for closure of evidence in view of the decision of Raj Deo Sharma I and Raj Deo Sharma II. He never knew that the court was hearing the said application. This would show that grave injustice has been caused to the original informant who had put the machinery of the investigating agency into motion, on account of which the concerned respondents have been facing their criminal trial in respect of serious offences like offences punishable under the Prevention of Corruption Act.

21. It is also required to be considered that the respondents do not appear to have made any attempt to see that FIR and chargesheet filed against him are quashed by this Court in exercise of the powers under Section 482 of the Code or under the provisions of Articles 226 and 227 of the Constitution of India. This would mean that there is a prima facie case against them according to their own reading of the case papers. It was an option to the respondents to challenge the charge or to face trial before the trial court but the fact remains that the charge has been framed and the order of framing of charge has not been challenged before this Court by way of criminal revision application. Therefore, I am of the opinion that simply because the prosecution did not keep the witnesses present and simply because the witness summons was not applied for, it would not be just, proper and legal to close the evidence of the prosecution behind the back of the original informant. I am of the view that even the court itself could have exercised it's powers suo-motu for issuing witness summons for doing complete and substantial justice to both the parties.

22. Mr.Amit Shah, learned advocate appearing for the CBI in this Revision has stated at the Bar that there are about 300 to 400 CBI cases pending before the trial court and there are only two Judges who are required to deal with those cases. He has also made a statement that these two learned Judges are required to deal with other cases of different types including Motor Accident Claims Cases and TADA cases also. It was, therefore, his argument in the cases in which he appears it was not even possible or practicable for the trial court to take up these many cases even if the court was inclined to take up such cases.

23. Now if this is the position then it would mean that gradually and by lapse of time, in all these cases before every commencement of evidence of the prosecution, the evidence may be closed in all those cases for want of presence of witnesses or for want of presence of Public Prosecutor. If 300 to 400 cases are pending without any trial then in my opinion a very grave injustice is likely to be caused to the justice itself. I am of the view that some positive action is required to be taken in this behalf in order to see that the cases against the accused are not prolonged on one hand and the evidence of the prosecution is not closed in so many cases at a time. It would be appropriate that either the learned Principal Judge of the City Civil & Sessions Court may take up the suitable action for proper distribution of the cases or in the alternative the office of this High Court may place the matter before the Hon'ble Administrative Judge in charge of City Civil & Sessions Court at Ahmedabad for doing some concrete work in the field in order to see that 300 to 400 CBI cases or other such serious cases do not go to waste paper basket without effective trial. Ultimately, the accused may be convicted or they may not be convicted. The court has not to be result oriented but the court must see that substantial justice is done. It is not enough to render justice to the parties. It is also necessary that it must appear that justice has been done to them. This can be achieved only if the matters are put to trial on day to day basis as has been laid down in Section 309 of the Code. It has been reiterated time and again and even in the case of State of Uttar Pradesh Vs. S.N.Singh reported in 2002(2) GLR 1093 also the said principle has been reiterated.

24. Therefore, in the present case, I find that there was some lapse on the part of the learned Special Public Prosecutor in not keeping the witnesses present in Court and in not applying for witness summons for keeping the

witnesses present in the court. There may be some lapse on the part of the CBI department also. Nevertheless, there were some adjournments on account of the fact that the court was busy for other matters and even the accused had also sought for a few adjournments. I am therefore of the view that closure of evidence for not keeping the witnesses present has resulted in grave injustice and, therefore, this is a fit case in which this Court should exercise it's revisional jurisdiction in order to set aside the impugned order of the trial court in order to do complete and substantial justice.

25. Mr.Y.S.Lakhani, learned advocate for the contesting respondents has submitted that this case can be separated from other Criminal Revision Application since the court had issued notice to CBI for keeping witnesses present and yet the CBI did not follow the said direction. Whether notice or no notice, the fact remains that the CBI and the Public Prosecutor both have not properly attended the case before the trial court in a proper manner. Yet, the cause of justice should not suffer on account of such omission of the CBI or the Public Prosecutor. The Government and Government Department and all impersonal machineries which may not promptly and effectively work when and where it is required to work.

26. The learned advocate for the respondents has heavily relied upon the observations of the Hon'ble Supreme Court in 2002(2) GLR 1093 (supra) to the effect that the cases already closed, need not be reopened.

27. Learned advocate for the petitioner CBI has drawn my attention to a fact that the present case is not a disposed of case and is not required to be reopened after disposal. That, only the evidence has been closed but the case is still pending before the trial court. Even otherwise this Court is not required to reopen the case again on the strength of the decision of the Hon'ble Supreme Court as the revision was filed much before the pronouncement of the judgment by the Hon'ble Supreme Court in 2002(2) GLR 1093 (supra). At the same time, it is required to be considered that the adjournments granted by the court on the dates of which the court itself was busy with other cases and the adjournments obtained by the defence have totally been ignored by the trial court. The trial court has also not taken into account the fact that the guidelines issued in Common Cause I would not be applicable to the facts of the case on hand in view of the guidelines issued in Common Cause II since the offence on hand was punishable under the

Prevention of Corruption Act. The trial court has also not considered the fact that the Raj Deo Sharma I and Raj Deo Sharma II are supplementary in nature and therefore those cases would also not be applicable to the facts of the case on hand. The trial court ought to have considered the serious nature of the offence.

28. If this approach, as adopted by the trial court, is accepted as a principle, then even the cases of murder under Section 302 of the Indian Penal Code, the cases of robbery and dacoity, the cases of TADA and many other cases of serious nature can also follow the said principle and the court may go on closing the evidence of the prosecution if witnesses are not kept present and applications for witness summons are not submitted by the prosecution for a long time.

29. The people have still faith and trust in judiciary. But if there is a delay in disposal of the cases and if the evidence of the parties is closed very regularly and frequently then the said trust is likely to be shaken and therefore with a view to preserve the trust, faith and confidence in judiciary, it would be necessary to see that the cases are disposed of on merits according to law and preferably by permitting the parties to lead evidence.

30. On the whole, I am of the view that this is a fit case wherein this Court should exercise it's revisional powers to quash and set aside the impugned order of the trial court.

31. For the foregoing reasons, this Revision Application is allowed. The impugned order passed by the trial court closing the evidence of the prosecution is ordered to be set aside. The matter is sent back to the trial court with directions to the trial court as follows:-

(1) The accused persons, except those who have already been exempted from their personal appearance by the court concerned and who do not dispute their identity as accused persons and whose advocates remain present, as well as the concerned Public Prosecutor in charge of the prosecution in respect of the Special Case No.30/85 shall appear before the trial court on 02/6/2003 at 11.00 a.m.

(2) The trial court shall fix the matter for further prosecution on such date/dates as the court may deem it proper.

(3) In the meantime, the concerned Public Prosecutor will take a stock of the matter as to the number of witnesses who may be kept present by the CBI and the number of witnesses whose presence could be procured on issue of witness summons. The concerned Public Prosecutor will also ascertain if witnesses are available at the address on records or if they have changed their address. The concerned Public Prosecutor shall also submit application for witness summons, if and when required, well in advance.

(4) The trial court shall take up the case on a day to day basis in accordance with the provision contained in Section 309 of Cr.p.c. 1973 as well strictly in accordance with the principles laid down in State of Uttar Pradesh Vs. S.N.Singh reported in (2002) 2 GLR 1093 which principle is applicable equally to the prosecution, the Public Prosecutor, the defence lawyers, the accused persons and also to the court.

(5) The office shall place a copy of this order before the Hon'ble the Administrative Judge of the High Court, in charge of the City Civil and Sessions Court to consider desirability of establishing some Fast Track Courts for exclusively dealing with CBI cases if the pendency of such cases is very high as stated by Mr. Shah, learned Special Public Prosecutor in the in the cognate Criminal Revision Application.

(6) Same way, CBI will also consider desirability of appointment of adequate number of Public Prosecutor/Special Public Prosecutor who may be available for the trial of CBI cases on day to day and full court hours basis.

(7) The trial courts will also consider desirability of taking up these cases even on First-Third and Fifth Saturdays on which offices of City Civil & Sessions Court do function. All other Courts and other offices in the State do function on those Saturdays. This would provide 2 to 3 additional working days to the court, to the Public Prosecutor and to the defence lawyers.

(8) The Superintendent of Police, Special Investigation Unit X at Delhi will undertake an inquiry as to why prosecution witnesses were not kept present and as to why witness summons were not applied for and as to why the concerned Public Prosecutor did not remain present before the trial court. The learned Special Public Prosecutor appearing for CBI in this matter will

arrange to send any copy of this order to the said officer who will conclude the inquiry within three months from receipt of this order by him and place his report on the file of this Criminal Revision Application. He will also consider desirability of taking actions against erring persons.

(9) The said officer of the CBI will also make an arrangement for keeping a watch on the day to day conduct of trial of this case. It may be open to him to entrust this function to his subordinate.

(10) All concerned shall bear in mind that the case is very old and that it is an important case as it relates to the offences punishable under the Prevention of Corruption Act.

(11) The concerned Public Prosecutor will also ascertain, in the meantime, that all the relevant documents are on hand and copies are supplied to the defence before commencement of recording of evidence of prosecution witnesses. This vigilance will reduce delay in disposal of the case.

(12) The trial court, in order to procure the attendance of witnesses, while issuing witness summons, will naturally apply it's mind to the power, function and duty under Sec.64 to 70 of the said Code if any when necessary.

(13) During the course of trial, the trial court will naturally take into account the provisions made in Sec.311 of the Code.

(14) The CBI shall deposit Rs.3,000/- as costs in Special Case under this revision within two months before the trial court and on such deposit, it shall be paid over to the accused persons in one set. It would be open to the CBI to consider and decide as to who was responsible for not taking adequate step to keep the witnesses present before the trial court or for not applying for witness summons, and to recover the cost from erring person.

(D.P. Buch, J.)

syed/